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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,279	09/29/2003	Wolfgang Hartung	117163.00090	3123
21324 7590 02/04/2010 HAHN LOESER & PARKS, LLP One GOJO Plaza Suite 300 AKRON, OH 44311-1076				
EXAMINER ALTER, ALYSSA MARGO				
ART UNIT		PAPER NUMBER		
3762				
NOTIFICATION DATE		DELIVERY MODE		
02/04/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
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Office Action Summary

Application No.

10/674,279

Applicant(s)

HARTUNG, WOLFGANG

Examiner

Alyssa M. Alter

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 11, 17, 18, 21, 22, 25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 11, 17, 18, 21, 22, 25 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Drafts/Person's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION
Response to Arguments

In view of the arguments filed on October 6, 2009, PROSECUTION IS HEREBY REOPENED. However, on further consideration, new grounds of rejection are set forth below under Alt et al. in view of Alt.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Carl H. Layno/

Supervisory Patent Examiner, Art Unit 3766

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3762

1. Claims 1-3, 6-7, 11, 17-18, 21-22, 25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the Applicant considers to be a "floating atrial electrode line" since the claim recites the "floating atrial electrode line" only possessing an "atrial wall electrode". Thus, it is unclear if the "at least one floating atrial electrode line" also possesses a floating atrial electrode in addition to the wall electrode.

Claim Objections

Claim 1 is objected to because of the following informalities: "such as". It is unclear whether the limitations following the phrase "such as" are part of the claimed invention. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3, 6-7, 11, 17-18, 21-22, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt et al. (US 6,370,427 B1) in view of Alt (US 5,403,355). Alt et al. discloses a pacing and defibrillation system. As seen in figure 4 the system includes an electrode line or lead 63 in the atrium with a wall electrode 64 and a floating electrode 62. Electrode 64, or the wall electrode, is used for sensing and pacing the cardiac activity of the atrium. Electrode 62, or the floating electrode, is used to provide a

defibrillation shock to the heart. The wall electrode operates in a first mode by sensing and pacing the atrium of the heart, while the floating electrode operates in a second mode to provide defibrillation stimulation. Additionally, figure 4 depicts a ventricular electrode line (VDD-electrode line) as lead 66. The lead also possesses a floating electrode 70.

Alt et al. discloses the device substantially as claimed except for placing a floating atrial electrode on the ventricular electrode line (VDD-electrode line). Alt '355 discloses a floating atrial electrode on a ventricular electrode line. The floating atrial electrode is depicted as 72 in figure 6. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the electrode lines and electrode placement of Alt et al. to include a floating atrial electrode on the ventricular electrode line as taught by Alt '355 since such a modification would provide the predictable results of sensing or stimulating multiple chambers. Additionally, placing multiple electrodes on one lead would also reduce the quantity of invasive leads placed into the heart.

As to claims 3 and 11, the modified Alt et al. discloses the claimed invention except for the two or more floating atrial electrodes and the two or more ventricular electrodes located on the ventricle electrode line. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include multiple electrodes on the electrode line, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (see MPEP 2144.04).

Additionally, such a modification would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lead electrodes since it was known in the art to place multiple electrodes on one lead in order to provide the predictable results of multi-site or multi-chamber sensing and stimulation without increasing the quantity of invasive leads placed into the heart.

As to claims 2, 11, 21 and 25, the modified Alt et al. discloses the claimed invention except for the high frequency stimulation with a cycle length of between 30-100 ms. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cycle length of the stimulation by Alt et al., since such a modification to the cycle length would provide the predictable results of modifying the stimulation to meet specific patient therapy needs and requirements. Additionally, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (see MPEP 2144.05).

As to claims 6, 17-18, the modified Alt et al. discloses the device the claimed invention except for the floating electrode performing as a sensor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the defibrillation electrode with a sensing capabilities since it is well known in the art to use dual sensing and stimulating electrodes. Furthermore, such a modification would provide the predictable results of additional sensing to ensure proper detection of cardiac fibrillation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Alyssa M Alter/
Examiner
Art Unit 3762